

# Journal of Political Science

---

Volume 3  
Number 3 (*Summer*)

Article 8

---

July 1976

## Legal Aspects of Home Rule

Jean Toal

Follow this and additional works at: <https://digitalcommons.coastal.edu/jops>



Part of the [Political Science Commons](#)

---

### Recommended Citation

Toal, Jean (1976) "Legal Aspects of Home Rule," *Journal of Political Science*: Vol. 3 : No. 3 , Article 8.  
Available at: <https://digitalcommons.coastal.edu/jops/vol3/iss3/8>

This Article is brought to you for free and open access by the Politics at CCU Digital Commons. It has been accepted for inclusion in Journal of Political Science by an authorized editor of CCU Digital Commons. For more information, please contact [commons@coastal.edu](mailto:commons@coastal.edu).

## Legal Aspects of Home Rule

by

JEAN TOAL\*

One thing that ought to be noted at the outset is that this piece of legislation, like anything else that is the product of a good deal of study and debate in the General Assembly, is the product of many hands from subcommittee stage on through a committee, and through extended debate on the floor of both bodies. The amendment process as you move on the floor and have a lot of conflicting philosophies makes the act one that has some contradictions in it. When you have a piece of legislation that results in the kinds of sweeping changes that come about as a result of Home Rule legislation, there is bound to be inconsistencies and interpretation problems. Sometimes counties are just going to have to see how the act best suits itself to their own particular needs and go forward in the process of perhaps Attorney General activity, Justice Department activity and even Court activity, not to mention General Assembly modification, revision and perfection of this act.

The fifth form of county government is a very real example of the kinds of conflicting philosophies that you have. Other sections that continue some delegation involvement in appointed matters until 1980 are examples of the kinds of compromises that became necessary to come forward with the bill. We needed to enact legislation to implement the obvious will of the people as far as local government is concerned, and we had to deal with it in that practical way.

But let's talk about a few of the problems that will present themselves to us now as we move to transition and full implementation of these forms of government, methods of selection and the powers that are granted under the Home Rule legislation. I'd like to first discuss the matter of the Justice Department because this is going to entail submittal by every county in this state with regard to their form of government. As you know there are several ways in which you can move towards adoption of a form of government. One of the ways is that you can have a referendum, and without going into the various ways in which the referendum can be triggered, suffice it to say that

---

\*State Representative, District Number 75, Richland County.

you can submit the matter of form and of method of election (i.e., single member districts vs. at-large) to the voters. And there are many counties that have already triggered this sort of referendum. After that is done, a good many people have asked, can we now enjoy the devolution of powers, new powers, under the new Home Rule Act? Can our existing government now use its authority under the new Home Rule Act?

Well, the best information that we have is that the answer to that question is "no." And there are several reasons for this: first, because your legislative delegation in the General Assembly has still got to select the term of office (i.e., two or four years), the number of people to serve on the council, and perhaps the composition of your single member districts (if that is what you choose).

Now after all that is done you still have to make a submittal to the Justice Department. The best interpretation that I have been able to get from the Attorney General's office is an opinion dated June 30 of this year in which the Attorney General's office seems to reach the conclusion that a complete submittal and approval by the Justice Department must be obtained before the new powers become effective.

Next comes the question: what if you don't do anything? If you don't take any action by way of referendum on either of the questions, form or single member districts, you will automatically have a preselected form on July 1, 1976. And you will automatically have single member districts in your county. The General Assembly has made a legislative determination that the preselected form is the form most in accord with what you now have. But as a practical matter, we know that is not true for some counties.

Another thing that concerns and worries me is this matter. Let's say you have had a referendum and you have selected a form and a method of election. Your delegation is active and has set up districts, determined numbers and terms of office. You have submitted to the Justice Department, but they have not given you approval by July 1, 1976. Where are you? You have not implemented a form of government at that date. Do you automatically go into the preselected form, stay where you are as far as districts and numbers and terms are concerned or is there a transition period that you still have left to work in that you can receive Justice Department approval and then enroll what you have adopted with the Secretary of State and become fully operational as far as your form of government? I do not know the answer to that question. A lot of that came about because of how



the act was amended as it got to the floor of the House and to the Senate and went to conference committees.

Let me pass for a minute to the Justice Department approval as in regard to this single member district vs. multi-member district problem. Under the list of submittals that you must make of information in Section 6, Subsection 4, where a particular office or particular officers are involved you must submit a history of the number of candidates, by race, who have run for such office in the last two elections and the results of such elections. So I think that past voting history in your county is going to have a lot to do with what the Justice Department says about your new plan. If the demography and the residents are such that you have had a lot of people elected from a small area in the county, and they are all of one race, I think that you are going to have problems if you come up with a plan that continues that sort of method of election. And, of course, that impacts itself particularly with regard to at-large.

Let me pass on briefly to another topic, which is transition problems under Section 3 of the act. Particularly with regard to budgetary matters and the like, when do we have full authority to operate under the new act? There is an attempt in the act to discuss the matter of transition. It says that a government can take all other necessary actions to implement the form of government adopted and transition to that form including, but not limited to a schedule for the election of council members.

But with regard to budgetary matters, it has unclear language. Who has budget making authority in this transition period? Particularly in those non-home rule counties where the delegation has previously adopted a county supply bill? The act says that all operations, agencies and offices of county government — appropriations and laws related thereto in effect on the date the change in form becomes effective — shall remain in full force until otherwise implemented by ordinance of council pursuant to this act. If you read that, you would think that if you have an old county supply bill, for example, it would remain in operation until the new council passes ordinances to set up its procedure for adopting a budget. It says further provided, however, that county council shall not enact ordinances in conflict with existing laws — except that when a form of government other than the fifth form, the Board of Commissioners form, is adopted or shall have been selected and an initial election of council held — this proviso shall not apply to appropriation matters. But you have an interim period there when you are making submittals to the Justice Department and your

fiscal year runs out. Now what do you do? Can you enact a county supply bill for some of these counties for this upcoming year? One of the difficulties in that regard is that you have a lower court decision in the *Booth vs. Grisholm* case, the Horry County case, which indicated that the Horry County supply bill was unconstitutional, but when it was appealed, the State Supreme Court said the question was moot now because home rule legislations had been adopted. This provides no clear guidelines.

What that means to me on a practical basis is that counties have really got to get on the ball, and if they are going to have referendums, they should go on and have them and get these submittals in to the Justice Department.

Now, those are a few of the more dramatic problems. Let me bring one other matter to your attention. Of all the material that is contained in new Article VIII, the only area in which the Constitution allows legislation and the General Assembly has not enacted enabling legislation is with regard to the matter of consolidation. The General Assembly made an attempt last year to update our annexation legislation but failed. But we do have pre-filed legislation which addresses itself to this. In my own personal opinion, I think that we are at the minimum two years away from an actual vote in any county on consolidation. And this presumes that we would actually enact consolidation legislation this year, which is highly speculative at this point.

Given the new powers that counties now have under Home Rule Legislation, it seems to me that it is not premature at all for counties to go forward with swift implementation on the form of government under the present Home Rule Legislation so that they can get on with the business of governing under the expanded authority that they now have.